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**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

In the Matter of

Policies and Rules Concerning
Children's Television Programming

Revision of Programming Policies
For Television Broadcast Stations

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MM Docket No. 93-48

**REPLY COMMENTS OF THE
ASSOCIATION OF INDEPENDENT TELEVISION STATIONS, INC.**

David L. Donovan
Vice President, Legal
and Legislative Affairs
Association of Independent
Television Stations, Inc.
1320 19th Street, N.W.
Suite 300
Washington, D.C. 20036
(202) 887-1970

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INTV, along with others in the broadcasting industry, supported the 1990 Children's Television Act. As broadcasters we recognize our fundamental obligation to serve the needs and interest of our community. In particular, we acknowledge our unique responsibility to the children in the audience.

After receiving numerous comments and conducting an *en banc* hearing, the fundamental issue remaining for the Commission is how the goals of the Children's Television Act can best be achieved. There are those who argue that the Act has not achieved its purpose. Despite the fact that the FCC's rules have been in effect since October of 1991, they are impatient with subsequent marketplace developments. Their solution -- regulation of a television broadcaster's programming and scheduling practices as well as a narrowing of the types of programs that can be classified as educational and informational.

This is not a debate about the importance of serving children. It is a debate about the best way to achieve this goal. INTV believes strongly that overly burdensome regulations will be counter-productive. There is no persuasive evidence of a market failure for children's educational and informational programming after the 1990 Children's Television Act was enacted and implemented by the FCC. The Act is working.

I. THE AMOUNT OF CHILDREN'S PROGRAMMING IS INCREASING.

No one disputes that the amount of children's educational and informational program has increased since 1990. Increases in the amount of children's educational and informational programs was well documented by NAB. Its survey of all television stations, both affiliate and independent, demonstrated that children's educational and information programming increased 81% from the fall of 1990 to the fall of 1993. According to their analysis, the average station aired over three and one half hours of regularly scheduled educational and informational programming.

NAB's data corroborates INTV's analysis of the marketplace. Attached to these Reply Comments is a Status Report on Children's Television programming.¹ Among the major conclusions:

- **Using the narrowest definition of educational and informational programming, the number of clearances on broadcast television stations has tripled from November 1990 (576) to November 1993 (1,746).**

¹See Appendix A

- **Clearances on independent stations increased from 219 in 1990 to 724 in 1993. Approximately 75% of these shows were broadcast at 7 AM or later in 1993.**
- **A separate survey of Independent stations demonstrates that the number of children's regularly scheduled half-hour educational programs increased from 42 per week during the first quarter of 1990 to 322 programs per week during the first quarter of 1994. Approximately 80% of these programs are aired at 7 AM or later.**
- **On average, Independent stations are broadcasting approximately 4.6 hours-per-week of children's educational and informational programming.**
- **Educational specials increased from 19.5 hours during the first quarter of 1990 to 63.5 hours during the first quarter of 1994. Many of these educational specials are locally produced.**

There is every reason to believe that the market for children's educational and informational programming will continue to grow. For example, three programs endorsed by the National Educational Association are making significant headway in the syndication market. The "Adventures of Blinkey Bill" (sold to 121 stations reaching 87% of U.S. Television Households) and Madison's Adventures" (cleared by 85 stations reaching 83% of television households) and "News for Kids" (cleared by 85 stations) will be broadcast this fall. Moreover, testimony from the network representatives indicates that they will increase the number of educational and informational programs appearing on the networks.²

²In fact the testimony of Mr. Squire Rushnell indicates that the networks have dramatically increased the amount of children's programming since 1990. See Prepared Remarks of Squire Rushnell June 28, 1994 at 4.

II. THE MARKETPLACE IS FUNCTIONING: PURPORTED "BARRIERS" TO FURTHER EXPANSION ARE EXAGGERATED.

Several parties, most notably the Center for Media Education (CME), argue that the marketplace is not working and that "major barriers within the television industry" are preventing the successful implementation of the 1990 Children's Act. CME's solution is additional regulation. INTV believes the study does not accurately describe the economic realities of the children's market.

First, the study is based on "interviews" with a variety of children's program suppliers. INTV does not doubt the sincerity of these interviews. Nevertheless, there is not one producer in the business today that does not believe his (her) show should be given better time slots, more promotion and additional money for production. This is true for producers of prime time entertainment shows that have not been successful.

Second, the analysis is counter intuitive and defies economic logic. It presumes a perverse incentive on the part of broadcasters with respect to children's television. Television stations have strong economic incentives to broadcast educational shows that will be popular with kids and place them in key time slots. The Children's Act provides added incentive to air these shows.

Missing from the CME study is an analysis of why the particular shows that were cited in the analysis had difficulties. The sad truth is that some of these shows simply wouldn't work, regardless of a production budget, promotion or favorable time slots. They were not popular with children. On this point the testimony of Mr. Peter Walker, general

manager of WGN and co-producer of "Energy Express" is instructive. WGN promoted the program, gave it a good time slot and still failed to achieve ratings that would ensure the show's continued viability. Indeed, as his written testimony indicated, the show failed to achieve significant ratings regardless of the time slot. It was a high quality production and received ample funding. In fact, the per episode production budget was twice as much as the production budget for broadcasting a Cubs game.

Third, the study is not predictive of future developments. Most initial programming ventures do not work. Three out of four prime time entertainment ventures fail in the marketplace. No doubt this holds true of children's educational and informational shows. It is simply incorrect to predict the functioning of a market from anecdotal evidence of a few disgruntled producers. This is especially true given the fact that the FCC order implementing the Act became effective only three years ago. The production community is still trying to figure out how to make educational shows that are both popular and entertaining. There are bound to be some failures. The difficulties of creating popular children's educational programming were well documented by all parties in this proceeding. As a result there are bound to be supply problems at this stage. Television stations would like nothing more than to see an abundant supply of highly popular educational and informational children's shows.

Fourth, the unstated thesis of the study is that educational children's programming will always be less popular than general entertainment children's programming. For the study to be predictive of future market developments, CME will have to document that this situation will continue to exist. However, all parties in this proceeding recognize that

education and entertainment are not mutually exclusive concepts. The key is to create educational programs that entertain and will be popular with children. In order for the Commission to consider the study as evidence of future market developments, thereby justifying additional regulations, it will have to accept the proposition that educational and informational children's programming will always be less popular than children's entertainment programs. None of the parties in this proceeding believe this to be the case.

Finally, and perhaps most importantly, the CME study fails to quantify the extent of these so called "barriers." If these "barriers" were so pervasive, then the amount of children's educational and informational programs available in the market would not have increased since 1990. As demonstrated above, this is simply not the case. Accordingly, one can certainly question whether the study accurately describes the entire children's marketplace or whether it simply focuses on a small subset of producers whose programs simply did not work.

The reality is that the FCC's order has been in effect for only 33 months. As, Sheila Tate, chairman of the board of directors of the Corporation of Public Broadcasting stated, it took 24 months for CPB to develop "PUZZLEWORKS."³ Regularly scheduled series programming requires anywhere between 65 and 130 episodes.⁴ This is true even though CPB relies on government financing and is not subject to commercial imperatives.

³Testimony of Sheila Tate, Chairman of the Board for the Corporation of Public Broadcasting, June 28, 1994 at 2.

⁴Id.

It simply takes time to develop top quality children's educational programs. The government cannot accelerate the process by administrative fiat.

INTV believes that the market will produce popular children's educational and informational programming. There is no long term structural barrier to continued expansion. The Act has served as a sufficient catalyst. The FCC should not over-regulate in an attempt to further "jump start" the market. In our view, over-regulating this market will be counterproductive. Once a car is started and running, it does little good to keep turning the ignition key. All you will do is burn out the starter. Unfortunately, many of the proposals proffered at the *en banc* hearing will have precisely this effect.

III. QUANTITATIVE REQUIREMENTS ARE COUNTERPRODUCTIVE.

At the outset, there appears to be a misconception that strict quantitative requirements are necessary to stimulate the production and exhibition of children's educational and informational programming. In this regard, much attention has been given to an analysis by Squire Rushnell which demonstrates that children's programming on the networks increased from 1975 to 1980. However, the FCC's 1974 Children's Policy Statement, which was operative during the relevant period, never included a strict quantitative requirement. It most certainly never required anything like an hour-a-day requirement, which received so much attention during the *en banc* hearing. Accordingly, if Mr. Rushnell's analysis is correct for this period, it demonstrates that strict quantitative requirements are not necessary to stimulate children's programming.

Various parties urge the Commission to adopt an hour-per-day program requirement. Such an approach is short sighted.

First, there is no doubt that the Commission will be trading quantity for quality. If such a requirement were imposed, stations no doubt, would scramble to put on any show that is educational. Shows would be broadcast, regardless of their popularity or economic viability. This is especially true in the short run.

Such a policy increases the likelihood that programs will be aired that children simply will not watch. As a matter of public policy, it does little good to provide educational programming if there are no viewers. The educational goal should be to develop educational programs that children want to watch.

The economic ramifications of such a policy may jeopardize the development of top quality educational shows. Forcing a station to put on unpopular programming means that the station will lose advertising revenue. If kids don't watch -- advertisers will not buy. Moreover, an hour-a-day requirement means that a station will have to take highly popular non-children's programs off the air. With respect to the networks, this may mean that the morning news shows, such as "Good Morning America" will be reduced by an hour. Similar decisions will be made at the local level.

However, what happens when a top quality children's program becomes available in the market? Stations, having lost significant revenues in the short run, will be in no position to acquire it. For example, before "Beakman's World" appeared on CBS it was

syndicated to local stations. Each episode cost \$200,000. Several commenters, such as CME, want the budgets for educational programming to increase to levels equal to entertainment programs.

The Commission cannot expect the market for popular educational and informational programs to develop if it enacts quantitative policies that cripple the economics of children's programs. An hour-per-day requirement will not help the developing market for children's programs -- it will hurt it.

IV. SCHEDULING PRACTICES AND REQUIREMENTS

Several parties argue that television stations should not receive credit for educational programs that air before 7 AM. Such a requirement is not necessary.

The practice of airing programs before 7 AM is not as extensive as CME states. Our own analysis and NAB's data indicate that approximately 80% of the programs are broadcast after 7 AM.

The study submitted by CME is somewhat limited. First, it reports an informal *TV Guide* survey of the top five markets and notes that some shows were broadcast at 5 AM & 6:30 AM. However, this does not provide evidence regarding the vast majority of educational and informational programs. Second, its study of 20 markets, finding that 44% of the programs aired at 6:30 AM or earlier, is confined to weekday programs. Of course, this makes some sense given the fact that the network morning news program begins at 7 AM. However, the analysis does not appear to examine "weekend" programs.

Many of the new educational and informational shows appear on weekends. They have not been in production long enough to create enough episodes to be "stripped" and made available to stations for daily broadcasts. The failure to consider weekend programs casts doubt as to whether the newer educational programs are receiving similar treatment.

Moreover, children are in the audience at 6 AM. According to NAB, approximately one and one-half million children are watching television at 6 AM, and about 2.4 million children are watching at 6:30 AM. Also, viewing patterns vary across the country. For example, prime time in the midwest begins an hour earlier than on the east coast.

Finally, INTV would remind the Commission that the FCC enforces its indecency rules beginning at 6 AM. These rules are specifically designed to protect children from indecent programming. In other words, the Commission has made the determination that there are a sufficient number of children up at 6 AM to warrant protection. It would be rather difficult to explain why children need to be protected from indecent television broadcasts at 6 AM and at the same time determine that there are not enough children in the audience to view children's programs.

V. NARROWING THE DEFINITION OF CORE EDUCATIONAL PROGRAMS

Three major proposals have been proffered on this issue. The first suggestion would require programs to have an education as their primary purpose with entertainment relegated to secondary status. The second proposal would require stations to hire educational consultant to help develop and create educational and informational

programming. The third idea would have local stations list the specific educational goals of the program and include this in its public file.

Requiring programs to have education as the primary purpose is short sighted. All the parties agree that the ultimate goal is to educate and inform children in an entertaining manner. If it is not entertaining, children will not watch it.

Given this fact, it is curious that the government should develop regulatory criteria that draw a distinction between the two concepts. This artificial dichotomy will bring public policy down the wrong path. The objective should be to use the creative genius of the entertainment industry to develop entertaining programs that educate children.

Drawing a distinction between entertainment and education may hinder the development of popular educational and informational programming. As Disney points out, programs such as "Bill Nye" may not qualify under such a requirement. In the end, the Commission will succeed in driving the most creative producers away from developing new children's programs. Nothing forces a producer like Disney to make educational and informational shows. If producers cannot focus on entertainment, they may simply move away from creating educational programs.

The second proposal, hiring educational consultants, on its face, appears to be a reasonable concept. Indeed, it may be appropriate for large network organizations. However, it should not be used as a threshold requirement for determining whether a particular program qualifies as an educational or informational show.

As the INTV survey documents, local Independent stations are providing large numbers of educational specials and other locally produced programs. However, local stations do not enjoy the economic clout of large network organizations. Budgets are constrained. According to a recent NAB financial survey, the median Independent station has a pre-tax profit of only \$54,000 per year. Many smaller stations have no budgets to hire educational consultants.

The net result of this proposal will be to discourage stations from producing educational and informational programs at the local level. Local stations will have to rely solely on national suppliers to meet their requirements. This is not sound policy. Issues such as drug use and race relations often have a uniquely local flavor. Stations should get credit for producing and broadcasting these programs without having to bear the expense of hiring "consultants."

Finally, several parties propose a filing requirement in which a station would list the educational goals of a program, identify the target audience and explain how the program meets these goals. Quite frankly, the FCC has had a similar policy for all programming for over two decades. It was called ascertainment and resulted in a nightmare of paperwork. The Commission eliminated the policy because it elevated form; *i.e.* filling out the paperwork, over substance. This proposal suffers from many of the same shortcomings.

How will the FCC approach enforcement? Does the Commission really want to litigate whether or not a particular program met the educational objectives contained in a report that was placed in the public file? In effect, the FCC would be forced to determine whether a specific program met the cognitive needs of specific age groups. It would have to analyze not whether the program was educational, but whether it matched the objective contained in the report. In order to be effective, the FCC would have to become deeply involved in content evaluation and theories as to how to educate. Just like the formal ascertainment process, the system will eventually collapse of its own weight.

VI. SHORT SEGMENT PROGRAMS SHOULD BE RECOGNIZED AS QUALIFYING PROGRAMS.

Short segment programs and educational public service announcements should qualify as meeting the FCC's requirements. It is ironic that for years "public interest" advocates have sought to limit advertising during children's shows. Underlying this policy was the view that advertising worked. Children responded to the 30 second messages.

Short segment messages are one of the most effective ways to reach children. Today, these messages are placed in the highest rated children's programs. More children can be reached with these messages than through a purely educational program that may or may not be watched.

As the INTV survey attached to these comments indicates, stations are proving thousands of these messages. During the first quarter of 1994, the average Independent station provided 6.8 hours of educational messages per quarter.

The Commission should encourage stations to broadcast these messages. This can best be accomplished by including short segment programs in its "core" programming requirement.

VII. THE FCC SHOULD CONSIDER COMPETITION FROM CABLE TELEVISION WHEN CRAFTING REGULATIONS REGARDING CHILDREN'S TELEVISION

Somehow lost in this debate is the simple fact that broadcasters are not the sole providers of video programming to the home. The children's television market is highly competitive. Several cable networks, such as the "Cartoon Channel," "USA Network" and "TNT" all provide general entertainment children's programming throughout the day.

However, none of the proposed rules will be applied to these cable networks. This creates a tremendous problem for the FCC and television stations. The Commission could craft the most restrictive regulations possible for broadcasting and still miss a significant portion of children in the audience. INTV has no doubt that if stations are required to broadcast unpopular educational programs, children will simply switch to children's entertainment programs on cable networks. There is nothing the FCC can do about it.

From the broadcaster's perspective, cable competition makes it all the more imperative that the educational programming be popular with children. If it is not, then we will lose the audience. This leads to lower revenues and further restricts our ability to acquire top quality children's educational and informational programming.

Accordingly, the FCC should be mindful that its policies must promote entertaining programs that will educate and inform children. Programs must be popular if we are to prevent the majority of our audience from shifting to cable networks. The Commission should refrain from enacting policies that foster educational, but nevertheless unpopular programs. Unfortunately, many of the proposals discussed at the *en banc* hearing will produce this result.

VIII. CONCLUSION

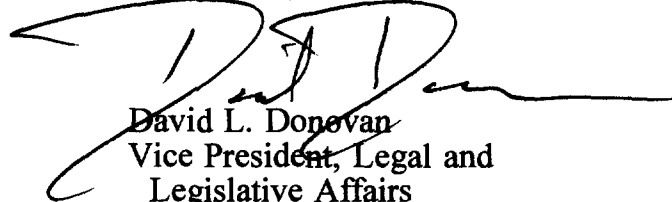
INTV does not believe the definition of what constitutes educational and informational programming needs to be changed. The proposal proffered at the *en banc* hearing will not help produce more quality children's programs.

Additional quantitative requirements, such as an hour-per-day, will have a perverse effect on the market for educational and informational children's programs. The market is growing and there is no reason to adopt such a burdensome requirement.

The 1990 Children's Television Act has stimulated the market. However, there is a fine line between stimulating and over regulating. The Commission must strike a delicate balance. To this end, INTV's proposal for a "safe harbor" achieves this result. The Commission should consider issuing a policy statement, not a rule, which encourages a station to broadcast two hours of educational and informational children's programs per week. One hour would be made up of standard length programming. The second hour could include other programs, most notably, short segment program.

This proposal strikes a reasonable balance. It will give broadcasters some certainty regarding their obligations. At the same time it will provide sufficient flexibility to explore new alternative ways of meeting our obligations under the 1990 Children's Television Act.

Respectfully Submitted

A handwritten signature in black ink, appearing to read 'David L. Donovan', is written over the typed name and title.

David L. Donovan
Vice President, Legal and
Legislative Affairs

ASSOCIATION OF INDEPENDENT
TELEVISION STATIONS, INC.
1320 19th Street, N.W.
Suite 300
Washington, D.C. 20036

July 15, 1994

APPENDIX A



INTV STATUS REPORT ON CHILDREN'S TELEVISION

The 1990 Children's Television Act requires that local television stations broadcast programs that are designed to meet the educational and informational needs of children. The FCC enacted rules implementing the Act which became effective in October of 1991.

Beginning last year, both Congress and the Federal Communications Commission inquired into the efficacy of the new law. Questions have arisen regarding the compliance of local television stations in providing educational and informational programming for children. The purpose of this report is to examine the availability of educational and informational shows for children since the enactment of the Children's Television Act.

To examine these issues INTV conducted two separate analyses. First, we examined the availability of educational and informational shows that are available in the syndication market. In addition, INTV examined the market clearances and scheduling of these programs on Independent stations.

The second analysis is a report of children's educational and informational programs, from all sources, that appear on Independent stations.

Analysis of the Children's Syndication Market

One of the key issues in the debate is whether the production community is producing educational and informational children's programs. This analysis focuses on children's educational and informational programming that was provided to stations through the syndication market. Accordingly, the analysis does not include children's educational and informational programs that are provided by the networks, ABC, CBS, NBC and Fox.

Syndicated children's programs are supplied to all television stations. The syndication market is a major supplier to independent stations. Network affiliated stations also purchase syndicated children's programs to supplement network offerings.

1. **Methodology:** All data were taken from the Nielsen's Station Index: Report on Syndicated Programs for November in 1990, 1991, 1992 and 1993. These reports list by program, all markets in which a program was cleared, the stations on which a program was broadcast, the time and date of broadcast, and the program rating.

In conducting this analysis, INTV examined a very narrow range of children's syndicated programming. Our intent was not to develop a definitive list of all programs that qualify under the FCC's rules. Rather, our objective in examining these programs was to develop a list of programs that are unquestionably educational and informational.

As a result, the analysis underestimates the amount of children's educational and informational programs that are being supplied by the syndication market. For example,

programs such as "Saved by the Bell" and "Winnie the Pooh," which the Commission and Congress recognized as educational and informational shows, are not included in the analysis. Also, syndicated programs such as "Animaniacs" and "Mr. Bogus" which often contain educational segments in the program were not included.

2. Analysis of Market Clearances: Market clearances are an important concept in the syndication market. Program suppliers sell directly to local television stations. As a general matter, each individual program is generally sold to one television station per market. Also, it is possible that a single station could acquire the rights to more than one program.

Accordingly, analyzing "market clearances" provides an accurate measurement of the exposure a particular program receives on a market by market basis. Aggregating the total number of "clearances" for programs gives a fairly accurate indication of the amount of programming that is available to the public.

In 1990, we could isolate eight programs that could be universally recognized as "educational and informational." By November of 1994 the number of programs increased to 19.

In addition to the increase in the number of program titles, the clearances of these programs has tripled since 1990. By 1993, these programs accounted for 1,746 clearances in U.S. television markets. (See Exhibit A.)

As noted above, syndicated television programming may be sold to both network affiliated and independent stations. Looking solely at clearances of these programs on independent stations demonstrates a dramatic increase in the number of syndicated informational and educational programs. In 1990, there were 219 clearances on independent stations. By 1993, the number increased to 724. Not only is this a considerable increase since 1990, but independent clearances account for 41% of the broadcast total. This is considerable given the fact that the vast majority of television stations in the United States are affiliated with the three major networks.

There has been some question regarding the scheduling of these shows. The concern is that most of these programs are scheduled in the early morning hours when most children are not awake. This does not appear to be the case with respect to program scheduling on independent stations.

For the programs listed in Exhibit A, there has been an increase in clearances of educational programs for all major time slots. Exhibit B lists these programs according to time period in which the program was broadcast. As can be seen, market clearances on independent stations have increased for all time slots. For example, during the 7 AM - 9 AM time period, the number of clearances increased from 38 to 197. In fact, in November, 1993, approximately 75% of these programs were broadcast at 7 AM or later.

Overall, the data demonstrate that syndicated children's educational and informational programming has increased significantly since 1990. The overwhelming majority of these programs are being broadcast at 7 AM or later.

Analysis of Station Surveys

To supplement the analysis of the syndication market, INTV surveyed its member stations in a variety of television markets. The focus of the survey was to examine whether or not there has been a change in the amount of children's educational and informational programming since the 1990 Children's Television Act was enacted.

The survey asked stations to list all programs that they believed satisfied the FCC's requirements to provide programming that met the educational and informational needs of children. Stations were asked to list a program's name, length, as well as the time and day of the broadcast. In addition, stations were asked to categorize programs' daily broadcasts (Monday - Friday), weekly broadcasts (regularly scheduled once-a-week programs), or specials (educational specials that were not scheduled at least once a week). In addition, stations were asked to provide a list of educational and informational short segment programs (less than 30 minutes in length).

Because INTV's membership includes both non-affiliated independent stations and Fox affiliated independent stations, the results include programming from both categories of stations. In addition, programs listed in the surveys include locally produced programs and programs acquired through the syndication market. For Fox-affiliated independent stations, educational programs provided by the Fox network were included.

To examine the effect of the 1990 Children's Television Act, stations were asked to list the children's educational and informational programming broadcast during the first quarter of 1990 and the first quarter of 1994.

Questionnaires were sent to 100 INTV member stations. We received 70 usable responses, resulting in a response rate of 70%. Responses were received from stations in a variety of markets.

| <u>Markets</u> | <u>Response Rate</u> |
|-----------------------|-----------------------------|
| 1-10 | 22.9% |
| 11-20 | 18.6% |
| 21-30 | 14.3% |
| 31-40 | 10.0% |
| 41-50 | 5.7% |
| 51-100 | 20.4% |
| 100+ | 7.1% |

While the response rate may appear skewed toward the largest markets, this does not undermine the validity of the results. For the most part, independent stations are located in the larger markets. The smallest markets tend to have fewer stations and those stations are generally affiliate with one of the three major networks (ABC, CBS & NBC).

1. Regularly Scheduled 30 Minute Programs: The results indicate a significant increase in the number of 30 minute regularly scheduled children's programs from 1990 to 1994. These increases can be seen in all time periods.

The first analysis is based on the number of programs. During the first quarter of 1990, stations broadcast 42 educational children's programs per week. This number increased dramatically for the first quarter of 1994. During this period, stations broadcast 322 regularly scheduled children's programs per week. Accordingly, the responding stations averaged 4.6 regularly scheduled half-hour programs per week during the first quarter of 1994. (See Exhibit C.)

Examining programs does not give the complete picture. Some programs are broadcast once a week, while others may be broadcast five times a week, usually Monday through Friday. Indeed, of the 322 programs broadcast per week during the first quarter of 1994, 82 of these programs were "stripped," *i.e.*, broadcast five times per week (Monday through Friday). The remaining 240 programs were broadcast once a week.

The distinction is important in determining the actual number of hours of educational and informational programs that are available. In terms of hours (both weekend and weekday) of children's educational and informational programming available per week, the data revealed that there were 325 hours of children's programming per week during the first quarter of 1994. Accordingly, the average independent station broadcasted 4.64 hours of children's educational and informational programming per week.